

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 29-006-15-1-5-00685-19
29-006-16-1-5-00686-19
29-006-17-1-5-00687-19
29-006-18-1-5-00688-19
Petitioner: Simon K. Fox
Respondent: Hamilton County Assessor
Parcel: 29-14-02-103-039.000-006
Assessment Years: 2015, 2016, 2017, and 2018

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioner initiated his 2015, 2016, 2017, and 2018 appeals with the Hamilton County Auditor.¹ On August 2, 2019, the Hamilton County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations denying the Petitioner any relief.²
2. The Petitioner timely filed Forms 131s with the Board and elected the Board's small claims procedures.
3. On December 12, 2019, Dalene McMillen, the Board's administrative law judge (ALJ), held a consolidated hearing. Neither the Board nor the ALJ inspected the property.
4. Simon Fox appeared *pro se* and was sworn. Attorney Marilyn Meighen appeared for the Respondent. Jason Schwartz and Katherine Schwartz were sworn as witnesses for the Petitioner. County employee Lisa Scherer was sworn as a witness for the Respondent.

Hearing Facts and Other Matters of Record

5. The property under appeal is a single-family residence located at 6598 Wilderness Trail in Fishers.

¹ It is unclear when the Petitioner initiated his appeals at the local level. The date listed on the Taxpayer's Notice to Initiate an Appeal (Form 130s) filed along with his Petitions for Review of Assessment (Form 131s) state the Form 130s were filed on August 24, 2019. This date appears to be inaccurate because the PTABOA issued its determinations on August 2, 2019. Regardless, because neither party raised an issue with the initial filings, the Board will not act *sua sponte*.

² The PTABOA issued Notifications of Final Assessment Determination (Form 115s) for assessment years 2015, 2016, 2017, and 2018. These are the only assessment years under consideration.

6. The official record for this matter is made up of the following:

a. A digital recording of the hearing,

b. Exhibits:

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| Petitioner Exhibit 1: | Petitioner’s calculation of “Actual Paid, Overpaid, and Expected Property Taxes,” |
| Petitioner Exhibit 2: | Form 130s ³ |
| Petitioner Exhibit 3: | Form 131s, |
| Petitioner Exhibit 4: | Form 115s, |
| Petitioner Exhibit 5: | Hamilton County “Special Message to Property Owner” dated March 17, 2017, March 15, 2018, and March 15, 2019, |
| Petitioner Exhibit 6: | Email exchange between Lisa Scherer and Simon Fox dated July 5, 2019, |
| Petitioner Exhibit 7: | Notices of Hearing dated October 11, 2019, |
| Petitioner Exhibit 8: | Joint Reports by Taxpayer/Assessor to the County Board of Appeals of a Preliminary Informal Meeting (Form 134s), |
| Petitioner Exhibit 9: | Notice of Appearance for Marilyn Meighen, Brian Cusimano, and Ayn Engle, attorneys for the Respondent, |
| Petitioner Exhibit 10: | Petitioner’s written testimony. |
| Respondent Exhibit A: | Claim for Homestead Property Tax Credit/Standard Deduction (Form HC10) dated June 12, 2019, |
| Respondent Exhibit B: | 2018 pay 2019 Hamilton County Tax and Assessment Statement, |
| Respondent Exhibit C: | 2017 pay 2018 Hamilton County Tax and Assessment Statement, |
| Respondent Exhibit D: | 2016 pay 2017 Hamilton County Tax and Assessment Statement, |
| Respondent Exhibit E: | 2015 pay 2016 Hamilton County Tax and Assessment Statement, |
| Respondent Exhibit F: | 2014 pay 2015 Hamilton County Tax and Assessment Statement. |

c. The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders, notices, and memorandums issued by the Board or our ALJ; and (3) these findings and conclusions.

³ The Petitioner interpreted his filings of the Form 130s and Form 131s to be for the tax years of 2015 pay 2016, 2016 pay 2017, 2017 pay 2018, and 2018 pay 2019.

Summary of the Parties' Contentions

7. Summary of the Petitioner's case:

- a. The relevant facts are largely undisputed. Mr. Fox moved to the United States in 1992. In 1999, Mr. Fox moved into the subject property and has lived there ever since. According to Mr. Fox, because he was new to the United States, he did not know if he had any right to a deduction on his home.⁴ *Fox testimony*.
- b. The subject property is being used as a homestead and the property taxes should be capped at 1% of the gross assessed value. Instead, the Auditor applied a tax cap of 2%, a tax cap that applies to the gross assessed value of other residential property and farmland. Over the last 20 years Mr. Fox estimates he has overpaid approximately \$40,000 in property taxes because of the incorrect tax cap application. Based upon information received from the Auditor's office, Mr. Fox is requesting the "back 3 years plus the current tax year" in overpaid taxes be refunded. *Fox testimony; J. Schwartz testimony; Pet'r Ex. 1, 6, 10*.
- c. Mr. Fox acknowledged the first time he filed for the homestead deduction via the Form HC10 was on June 12, 2019, certifying the subject property is his principal place of residence. *Fox testimony*.

8. Summary of the Respondent's case:

- a. The Petitioner's 2014 through 2018 tax statements indicate the subject property was not receiving a homestead standard deduction or supplemental homestead deduction. The same tax statements indicate the property tax cap applied each year was 2% with additional taxes for voter approved projects and charges. *Scherer testimony; Meighen argument; Resp't Ex. B, C, D, E, F*.
- b. Even though the Petitioner may have been eligible for a homestead deduction, he did not apply for the deduction until June 12, 2019. The Petitioner did not apply for a homestead deduction for the years in question and as a result he is not entitled to the deduction. *Meighen argument; Scherer testimony; Resp't Ex. A*.

Analysis⁵

9. Indiana Code § 6-1.1-12-37 provides a standard deduction from the assessed value for homesteads, which the statute defines as a dwelling than an individual owns and uses as

⁴ The Petitioner used the term "homestead exemption" throughout his presentation. There is no exemption that exempts homesteads from taxation. The Board infers he is referring to the standard deduction for homesteads provided for under Ind. Code § 6-1.1-12-37, and will use the term "homestead deduction" hereinafter.

⁵ Because the Petitioner did not challenge the current assessments of the subject property, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioner.

his principal place of residence and up to one acre of surrounding land. Ind. Code § 6-1.1-12-37(a)-(c). At all times relevant to this appeal, the taxpayer was required to apply for the deduction in one of two ways.⁶ First, he could file a certified statement with the county auditor on forms prescribed by the Department of Local Government Finance (DLGF). Ind. Code § 6-1.1-12-37(e). The DLGF prescribed Form HC10 for that purpose. 50 IAC 24-4-2. A taxpayer had to complete Form HC10 within the calendar year for which the deduction was sought and file that form on or before January 5 of the immediately succeeding year. *Id.*; Ind. Code § 6-1.1-12-37(e). Alternatively, a taxpayer could use the sales disclosure form at the time of purchase to claim the deduction. *Id.*; Ind. Code § 6-1.1-12-44.

10. The subject property qualified as a “homestead” under Ind. Code § 6-1.1-12-37(a)(2). With that being said, the Auditor has no record of Mr. Fox having filed anything to claim a homestead deduction until June 12, 2019, when he filed his Form HC10 for the first time. The Petitioner does not dispute this fact. For this reason, Mr. Fox is not entitled to the homestead deduction for 2015, 2016, 2017, and 2018 because he failed to timely apply for the deduction.
11. Regarding the tax caps, Indiana provides credits that effectively cap property tax liability at a specified percentage of gross assessed value. Ind. Code § 6-1.1-20.6-7.5. The amount of the credit depends on the property’s classification. *Id.* Property defined as a homestead under the tax-cap statute gets a 1% cap while other residential property gets a 2% cap. Ind. Code § 6-1.1-20.6-7.5(a)(1)-(2). The Petitioner claims that his property met the definition of a homestead and therefore qualified for the 1% tax cap because it was eligible for the standard deduction, while the Respondent argues that the Petitioner needed to have been granted the standard deduction in order for the property to qualify for the 1% tax cap.
12. We agree with the Respondent. Before 2013, the tax-cap statute defined a homestead as “a homestead that [was] *eligible for* a standard deduction under I.C. 6-1.1-12-37.” Ind. Code § 6-1.1-20.6-2(a) (2012) (emphasis added). In 2013, however, the legislature passed emergency legislation changing the definition of a homestead to “a homestead that *has been granted* a standard deduction under I.C. 6-1.1-12-37.” *See* 2013 Ind. Acts 257, §28. The amendment took effect May 11, 2013.⁷
13. For the years in question, mere eligibility for the standard deduction was not enough to qualify for the 1% tax cap; instead, a property needed to have been granted the standard deduction. The undisputed evidence indicates the Petitioner had neither applied for nor been granted the standard deduction, and as a result is not entitled to the 1% tax cap for these years.

⁶ Once the auditor grants the deduction, it carries forward and taxpayers need not reapply. *See* Ind. Code § 6-1.1-27-37(e); Ind. Code § 6-1.1-12-17.8.

⁷ A decision issued after this hearing interprets this statute as applying to years after 2013. *See Purdom v. Knox Co. Ass’r*, No. 18T-TA-00032, 2020 Ind. Tax LEXIS 4 (Ind. Tax Ct. Feb. 11, 2020).

Final Determination

In accordance with the above findings of fact and conclusions of law, the Board finds the Petitioner failed to file the standard homestead deduction for the 2015, 2016, 2017, and 2018 assessment years. As a result, the Petitioner is not entitled to the homestead deduction or the credit capping his taxes at 1% of the property's gross assessed value for these years.

ISSUED: March 10, 2020

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>